Environmental Rules Board – Questions to the Petitioners, Set 1

1. **Do any of the communities that support this petition have dry weather Combined Sewer Overflows (CSOs)?**

   No, we are not aware of any supporting communities who have dry weather CSOs. "Discharges during dry weather have always been prohibited by the NPDES program" (1994 EPA CSO Policy) and would not be covered by the efforts being made by the Petitioners.

2. **Angola stated in their presentation that the elements of their Long-Term Control Plan (LTCP) were met in 2010 and that post construction monitoring verified that their efforts "exceeded" the desired result. Has Angola conducted water quality monitoring during the past ten years to demonstrate that that the Recreational Water Quality Standards (RWQS) are being meet? If so, can you provide the data to support attainment?**

   Angola followed the 1994 EPA CSO Policy and IDEM Non-rule Policy guidance in development of a Long Term Control Plan (LTCP) that would meet the "Presumption Approach" (See Page 18 of the 1994 EPA CSO Policy or Page 28 of IDEM's Non-Rule Policy Document Water-003-NRD) by meeting the minimum Level of Control based on 1-Year, 1-Hour and 10-Year, 1-Hour design storms. Post-construction monitoring demonstrated compliance to those prescriptive performance standards, not to meeting numeric biochemical/bacterial standards on CSO flows.

   Guidance from IDEM's Non-Rule Policy Document (NPD) Water-003-NRD does not require biochemical/bacterial sampling to demonstrate compliance. Rather, the agency identifies performance-based criteria that "…would be presumed to provide an adequate level of control to meet the water quality-based requirements of the CWA…" (P. 28). What were some of the performance-based requirements? No more than an average of 4 CSO events per year, with a maximum of 6 events per year (Angola average = 3 events per year); or elimination or capture for treatment of no less than 85% by volume of flow collected in the combined sewer system (Angola average = 97%).

   "[U]se of either of the presumption approach options should be based on reasonable assumption that implementation of controls meeting these criteria will be sufficient to prevent violations of water quality standards." (Pgs. 29 – 30). And Indiana law expressly states that fully implemented LTCPs **"fulfill the water quality goals of the state with respect to wet weather discharges that are a result of overflows from the combined sewer system addressed by the plan[s]."** IC 13-18-3-2.3(a); ***emphasis added***.

   Angola's CSO compliance measurement is based on a design storm in accordance with NPD Water-016 and the City has demonstrated compliance with CSO capture requirements since the completion of the CSO LTCP. And yet, Angola's residual CSO discharges still cannot comply with Indiana's recreational water quality standard (RWQS) and are deemed "prohibited discharges" in its NPDES permit.

The 1994 EPA CSO Policy recognizes that CSO discharges cannot comply with traditional State RWQS because of the elevated levels of E. coli in the discharges. No CSO community that has untreated CSO discharges after full implementation of an approved LTCP can comply with a traditional RWQS like Indiana's. Accordingly, the CSO Policy called on states to modify WQS to address the episodic nature of the discharges and accommodate the recognition that wet weather discharges cannot realistically be held to meet dry weather, low flow standards.

The Petitioners believe that Indiana's RWQS can utilize the Presumption Approach or otherwise be implemented in a way that is achievable for CSO communities while protecting water quality and public health.

3. **Angola has had 10 years to file a Use Attainability Analysis (UAA) and created the certainty they are seeking in this request, why have they not done so?**

Under the guidance that Angola and many other Indiana communities followed, referenced in NPD Water-003, a UAA is not necessary. As stated above, guidance provided by IDEM for communities utilizing the Presumption Approach identifies a number of performance-based criteria that "…would be presumed to provide an adequate level of control to meet the water quality-based requirements of the CWA…"; "use of either of the presumption approach options should be based on reasonable assumption that implementation of controls meeting these criteria will be sufficient to prevent violations of water quality standards."

NPD Water-016 affirms this position, as it explicitly states: "A CSO Treatment Facility designed and operated as discussed in this document provides a prescribed high level of CSO treatment that **precludes the need for a use attainability analysis**." (Section 3, Page 2 of 8; ***emphasis added***)

CSO communities, such as Angola, that embarked on CSO LTCPs consistent with this high level of CSO control did so with the understanding that a UAA and subsequent change of water quality standards to the Wet Weather Limited Use Subcategory would not be necessary.

However, Angola's NPDES permit Attachment A currently provides that all CSO discharges are "prohibited." Angola must rely on IDEM's enforcement discretion or undertake the uncertain, costly, lengthy, and burdensome UAA process.

4. **Petitioners have represented to the Board that adoption of the 2012 criteria would allow CSO communities to be considered in compliance with water quality standards provided that after LTCP implementation they do not have CSO discharges on more than 10% of days "time" during the defined averaging period. Is this view or interpretation supported by any other State that has adopted the 2012 criteria, or by any regulation, guidance, or policy from EPA? Is there any indication that EPA agrees with this interpretation?**

Please see the attached proposal, *"Implementation Changes to Recreational Water Quality Standard"* (the "*RWQS Implementation Proposal*" or "*Proposal*"), which sets forth the Petitioners' current proposed solution to provide regulatory certainty to Indiana's CSO

communities. The Petitioners developed the Proposal over the last year, after several meetings with IDEM, in an effort to find middle ground between the agency's position and the original petition to adopt the 2012 RWQS. Instead of advocating for adoption of the 2012 criteria, the *RWQS Implementation Proposal* retains Indiana's current E. coli numeric criteria. The criteria, however, would be implemented in a way that is actually achievable by CSO communities that have residual CSOs after full and successful implementation of their LTCPs. The Proposal provides support for the suggested implementation changes, including an analysis of State and Federal laws, guidance, and policies.

The Petitioners are preparing a separate proposal setting forth a performance standard approach, which can be provided to the Board upon completion.

5. **What do the communities requesting this change propose for E. Coli limits?**

The attached *RWQS Implementation Proposal* would not change Indiana's current E. coli numeric standards of 125 cfu or MPN as a geometric mean and single sample maximum of 235 cfu or MPN. We propose that IDEM implement the current standards in a way that is attainable for CSO communities that have residual CSO discharges after full implementation of approved LTCPs. For more detailed information, please see attached *RWQS Implementation Proposal*.

The Petitioners are developing a separate proposal to use performance standards as the measure of compliance with water quality standards. As previously mentioned, the 1994 EPA CSO Policy and various IDEM NPDs anticipate compliance through performance based activities - "use of either of the presumption approach options should be based on reasonable assumption that implementation of controls meeting these criteria will be sufficient to prevent violations of water quality standards."

6. **Have any communities conducted sampling to determine if they can meet the existing limits or more importantly the RQWS limits?**

No CSO community that has untreated CSO can comply with Indiana's RWQS as it is currently implemented. CSO discharges cannot meet traditional State RWQS (like Indiana's) because of the elevated levels of E. coli in the discharges.

7. **Indiana passed SEA 431 in 2001 to provide relief for CSO communities. Have any of the petitioners requested relief using this methodology?**

SEA 431 was codified as IC 13-18-3-2.5, and its implementation by IDEM appears to be documented in the Non-rule Policy Document Water-003-NRD. As written, it appears that this document is written for the purpose of developing the framework of the UAA process, not providing regulatory certainty for CSO communities as SEA 431 was intended.

SEA 431 provides that a long term control plan, upon implementation, fulfills the water quality goals of the state with respect to wet weather discharges that are a result of overflows from the combined sewer system addressed by the plan if:

(1) The plan provides for the implementation of cost effective (as determined by a knee of the curve analysis) control alternatives that will attain water quality standards or maximize the extent to which water quality standards will be attained if they are not otherwise attainable;

(2) The plan provides, at a minimum, for the capture for treatment of first flush;

(3) The plan is reviewed periodically; and

(4) Additional controls are implemented if required under Section 2.4.

Additionally, SEA 431 provides that if a UAA is sought, the agency must review a UAA concurrently with a LTCP and use the approved LTCP to satisfy the requirements of the UAA.

CSO communities have not received the relief intended by SEA 431. No CSO community with untreated CSOs that remain after full implementation of its approved LTCP can attain Indiana's RWQS as it is currently implemented. To date, LTCPs have not been considered as fulfilling Indiana's water quality goals. Many CSO communities submitted UAAs with their LTCPs but the agency would not substantively review or approve those UAA analyses. And the UAA process currently requires substantial information in addition to what LTCPs encompass.

Environmental Rules Board – Selected Questions to the Agency, Set 1

8. **Please define the terms "designated use" and "existing use" for the Board and the impact on adopting RWQS for Indiana.**

   Modifying implementation of WQS to address residual CSOs at the end of an approved LTCP implementation and verification, as set forth in the *RWQS Implementation Proposal*, would not impact existing or designated uses.

9. **How many permits would be affected by the change?**

   Approximately 10-20 CSO communities fully separated combined sewers and are no longer designated as Combined Sewer Systems (CSSs). Therefore, approximately 80 permits might be impacted; however, it is possible that only minor permit language changes would be necessary if an NPD were developed to aid CSO communities in demonstrating compliance. The Petitioners are developing such an approach.

10. **Are there other water programs that would be affected by the change?**

The Petitioners' approaches are specific to CSO communities to minimize/eliminate impacts on other water programs.

11. IDEM has designed all waters as full-body contact use and for support of a well-balanced aquatic community. Are there any waters that CSO communities discharge to that have been identified as having an existing use? i.e., Mishawaka discharging to the St Joseph River.

"Existing uses are those actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards." 40 C.F.R. § 131.3(e) (emphasis added). "Designated uses are those uses specified in water quality standards for each water body or segment whether or not they are being attained." 40 C.F.R. § 131.3(f).

Whether an "existing use" exists should be determined by water quality. If streams have not met recreational water quality standards during and after wet weather events, then those streams have not "actually attained" a recreational use. This is true even though people may wade, play, or swim in CSO-impacted streams. An "actually occurred" use is not the same as an "actually attained" use.

During discharges of non-treated CSOs, receiving waters cannot satisfy Indiana's RWQS as currently implemented. Accordingly, the water quality needed to support a designated use of full-body contact recreation (swimmable) has not been attained, and the designated use is not an existing use during or following periods of wet weather conditions that result in CSO discharges.

If IDEM or EPA maintain that any use that actually occurs in a CSO-impacted stream is an existing use, then many (if not most) Indiana CSO communities would face a potentially insurmountable obstacle in obtaining a UAA for the CSO Wet Weather Limited Use Subcategory. This is yet another reason why the UAA process is not a good solution for Indiana CSO communities.

It is also important to keep in mind that during wet weather events, many water bodies do not attain the water quality needed for primary contact recreation even absent CSO discharges; this is due to contributions of E. coli from other, more significant sources.

12. Indiana has provided seasonal relief for designated uses and criteria for those uses. IF RWQS are adopted can the same relief be provided to communities?

The Petitioners' *RWQS Implementation Proposal* would not impact Indiana's seasonal relief.

13. The work group made several attempts to modify the language in 327 IAC 2-1-6(d), would these changes constitute "backsliding" based on limits currently in place?

The implementation changes considered in the Petitioners' Proposal would not constitute backsliding because Indiana's numeric criteria would remain the same.

Moreover, adoption of the 2012 RWQC would not constitute backsliding. Indiana's current criteria is a geometric mean of 125 cfu or MPN and a single sample maximum of 235 cfu or MPN. The 2012 criteria is a geometric mean of 126 cfu and a statistical threshold value (STV) of 410. The STV approximates the 90th percentile of the water quality distribution, as opposed to Indiana's single sample maximum. Because the two standards measure different values, moving from a single sample maximum to an STV is not backsliding.

Additionally, the 2012 criteria provides standards based on the same estimated illness rate as Indiana's current standard. Indiana's standard is very similar to EPA's 1986 RWQC, which uses a geometric mean of 125 cfu and a single sample maximum of 235 (using the 75% confidence level). "EPA estimated in 1986 that the predicted level of illness associated with the criteria was 8 HCGI [highly credible gastrointestinal illness] per 1,000 primary contact recreators in fresh water . . . ." EPA Office of Water 820-F-12-058, p. 13 (2012 RWQC). This is "estimated to be equivalent with an illness rate of approximately 36 NGI [National Epidemiological and Environmental Assessment of Recreational Water GI illness] per 1,000 primary contact recreators," (p. 14) which is the illness rate upon which the 2012 RWQC is based. Accordingly, the 2012 RWQC is equally protective of human health as Indiana's current standard and backsliding is not an issue.

There are several examples of Indiana standards being revised to incorporate more permissive limits, none of which have violated the prohibition on backsliding.

One such example includes revisions to the selenium criteria, approved at the May 12, 2021 ERB Meeting. As stated in the report to the ERB: "Indiana's current criteria do not reflect the current science for selenium toxicity and may not be protective of the aquatic life designated use." The approved revisions to the selenium criteria resulted in more stringent chronic criterion, but less stringent acute criterion.

Another example includes the 2011 revisions for chloride criteria calculations, because "[n]ew toxicological data on chloride have become available and the data used by the U.S. EPA to establish the chloride criteria are old and need to be updated." These revisions incorporated instream background concentrations of sulfate and hardness, and depending on the stream characteristics, could result in less stringent acute and chronic chloride criteria.

14. Would communities be allowed one sample/month, or would they have to take a minimum number per day, week and month?

Monitoring during wet weather events that give rise to CSO discharges often is dangerous and not feasible. It is also of very limited utility because during wet weather there are other more significant sources of E. coli contributing to water quality. The Petitioners' *RWQS Implementation Proposal* does not require in-stream or end-of-pipe monitoring but does calculate E. coli using calculations with established E. coli values that are very conservative.

Environmental Rules Board – Questions to the Petitioners, Set 2

15. **What monitoring data is collected during CSO events? What are typical levels of E. coli and Enterococci? How do those numbers compare with IDEM's current water quality criteria at 327 IAC 2-1-6(d) and the 2012 RWCQ?**

Please see the attached *RWQS Implementation Proposal*.

16. **The petitioners seek regulatory certainty. Can you clarify what that means? Is it:**

    a. Because every 5 years NPDES permits must be renewed and new regulations may change?

    b. Because the approval process of a UAA every five years is under question?

    c. Because LTCP compliance terms may be left to interpretation and therefore can essentially be changed?

    d. Misunderstandings/disagreements between EPA and IDEM?

    e. Because of something else?

Communities have committed to historic investments to reduce/eliminate CSOs based on the framework of the 1994 EPA CSO Policy. This policy established prescriptive methods that a community could use to document compliance with the policy. The 94 EPA CSO Policy anticipated CSO communities could expect regulatory certainty based on two broad objectives:

1. Communities would work with State WQ agencies to develop and implement CSO controls that would meet objective standards; and

2. State WQ agencies would modify WQS to address episodic discharges and site-specific wet weather impacts of remaining CSOs.

Indiana's CSO communities that reach full implementation of their LTCPs and meet the performance requirements of the CSO Policy find that their residual CSO discharges still cannot comply with Indiana's RWQS and are deemed "prohibited discharges." In fact, for many Indiana communities, CSOs are prohibited discharges that must be reported using the same mechanisms as Sanitary Sewer Overflows (SSOs), and communities must be prepared to substantiate that each individual event met the individual community's defined Level of Control.

This is the uncertainty that Indiana's CSO communities face. They are forced into a position where their residual CSOs are deemed a violation of the Clean Water Act because they cannot comply with Indiana's RWQS as currently implemented.

Currently, Indiana's approach to addressing WQS for residual CSO discharges is implemented solely through the UAA process, which is burdensome and uncertain for the following reasons:

1. EPA approval is required for a community to obtain a UAA. IC 13-18-3-2.5(b)(4); 40 C.F.R. 131.21.

2. LTCPs are not being used to satisfy the UAA requirements. Despite SEA 431 and IC 13-18-3-2.3, which require the department to use the approved LTCP to satisfy the requirements of the UAA, there are many burdensome elements of the UAA that currently are considered "not addressed" in LTCPs.

3. The initial consulting and legal costs for preparing a UAA with river water quality modeling are estimated to be in the range of $200,000 to $400,000. Another $200,000 to $300,000 could be required if the community's collection system model has not been developed or needs to be overhauled.

4. There are significant burdens on employees' time and efforts during the UAA process.

5. NPD Water-003 states that if a UAA is denied, full CSO elimination is required without regard to any knee-of-the-curve analysis.

6. If a UAA is approved, Indiana law requires that it be reviewed by the CSO community and IDEM every five years, which also costs money and time. IC 13-18-3-2.4; IC 13-18-3-2.5(f).

7. Every three years in the Triennial Review process, states are required to re-examine waterbody segments that have limited use categories to determine if new information exists indicating that the limited use can be removed. 40 C.F.R. 131.20(a).

8. IDEM's current and most recent Triennial Review identify a very broad priority to initiate rulemaking "to remove the limited use waters classification and waters classified for limited use in 327 IAC 2-1 and 327 IAC 2-1.5." Despite the agency's claim to the contrary, as written, this indicates that an agency priority is to eliminate all limited use classifications; this would include the CSO wet weather limited use subcategory.

9. Initially, Indiana communities developed UAAs in conjunction with their LTCPs but the agency did not substantively review or approve the UAAs. The intention espoused by SEA 431 and IC 13-18-3-2.3 for UAAs to be considered concurrently with a LTCP submittal has not been realized.

As discussed herein, the 1994 CSO Control Policy only anticipated utilizing the UAA process in limited circumstances. As previously mentioned, the 1994 EPA CSO Policy and various IDEM NPDs anticipate compliance through performance based activities - "use of either of the presumption approach options should be based on reasonable assumption that implementation of controls meeting these criteria will be sufficient to prevent violations of water quality standards."

The Petitioners are developing options that would incorporate the CSO Policy's performance standard approach or retain Indiana's current E. coli limits but implement the RWQS in a way

that is attainable for CSO communities that have residual CSO discharges after full implementation of approved LTCPs.

17. One reason we've heard for adopting the 2012 RWQC is so that communities can use that as a competitive edge in attracting industry (or at least that is my understanding). What would be the competitive edge(s)?

a. Would obtaining a NPDES permit be easier, or at least more straight forward? (If yes, please explain).

b. Would a community showing they met the 2012 RWQC be an enticement to additional commercial or residential development? (If yes, please explain).

c. Something else?

Without a defined endpoint (regulatory certainty), zero discharge will eventually be required of every Indiana community. This is a standard that (to our knowledge) is not being applied by the respective state agencies in Ohio, Kentucky, Illinois or Michigan.

The cost for communities to go to zero discharge has not been estimated for the entire state, but based on Mishawaka's current Consent Decree, it would cost them $163,000,000 to go from where they are right now to zero, with no demonstrable net increase to water quality.

The cost to go to zero CSO is borne by the rate-payers and tax-payers in affected communities; residents, industries, businesses, colleges and universities, hospitals, etc.

18. In 2014 (or thereabout) did the terms of Angola's LTCP and/or NPDES permit change? If so, why?

While the City implemented CSO capital improvements in the 1990s and early 2000s, the CSO LTCP was formally approved by IDEM via NPDES permit modification in June 2007. Specifically, the Attachment A of the City's NPDES permit was modified to include the approved LTCP project description and schedule, along with language stating that IDEM will apply Enforcement Discretion for storm events in excess of the target design storm based upon NPD Water-016. In 2010, the City's NPDES Permit was renewed and the Attachment A CSO terms and conditions were consistent with the 2007 NPDES Permit Modification.

When the City's Permit was renewed in 2015 and 2020, the Attachment A of the Permit stated that: "Discharges from any portion of the sewer collection system, except flow from the Wastewater Treatment Plant (WWTP) via Outfall 001, are prohibited. This prohibition includes discharges from the CSOs identified below……"

As stated in previous responses, any CSO event must now be reported similarly to Sanitary Sewer Overflows, which are also prohibited. This permit change and strict prohibition of CSOs is not isolated to Angola and has been or will be applied to the permits of approximately 65 CSO

communities in the State of Indiana. This is a clear example of regulatory Uncertainty and why the petitioners believe that changes consistent with the 1994 Federal CSO policy are necessary.

Environmental Rules Board – Selected Questions to the Agency, Set 2

19. **What monitoring data is collected during CSO events? What are typical levels of E. coli and Enterococci? How do those numbers compare with IDEM's current water quality criteria at 327 IAC 2-1-6(d) and the 2012 RWCQ?**

    Untreated CSO discharges cannot comply with Indiana's RWQS as it is currently implemented.

20. **In her presentation, Ms. Mettler indicated there is no clear way to be sure that communities are done with their LTCPs and that EPA is reluctant to agree that the work has been completed. If the communities have LTCPs under consent decree and/or state enforceable requirements, why can't an end point be approved?**

    This is the crux of the issue with regulatory uncertainty – the CSO communities are facing a potential that they will never be "done." Currently, CSO communities that have (or will have) untreated residual CSO discharges after full implementation of their LTCPs face three options: (1) go far beyond the knee of the curve to completely eliminate CSO discharges (if feasible from an engineering/technology standpoint); (2) pursue the expensive, burdensome, and uncertain UAA process; or (3) be deemed in violation of the Clean Water Act and depend upon enforcement discretion by the agency. The Petitioners believe there is a better path forward.

    An end point could and should be attainable if performance standards were utilized to demonstrate compliance with WQS or if WQS were implemented in a way that is achievable for CSO communities that have residual CSOs after full implementation of approved LTCPs. There must be a solution whereby CSO communities that comply with the Level of Control established by their LTCPs thereby satisfy the water quality goals of Indiana and the Clean Water Act. Thus, The *RWQS Implementation Proposal* provides one way to be "done"; another is a performance standards approach.

21. **Commissioner Pigott's presentation on UAAs (https://www.in.gov/idem/cleanwater/files/cso_uaa_presentation.pdf) indicates that 53 communities have completed their work. Does this mean that IDEM believes LTCP commitments in these communities have been met? What about EPA?**

    The fundamental issue is that CSO communities meeting their LTCP obligations are still deemed in violation of the CWA because the RWQS are not achievable for any residual non-treated CSO discharges. Communities that meet their LTCP commitments should be done. If a LTCP has been implemented and a level of control review has been conducted with the permittee

meeting compliance with level of control, then CSO discharges should not be prohibited as is currently the case in NPDES Permits with Attachment A language.

22. Why must a new UAA, after the first one is approved, be submitted five years later?

Obtaining a UAA for the CSO Wet Weather Subcategory is currently the only way for a CSO community with residual CSOs after full implementation of an approved LTCP to be in compliance with Indiana's WQS. IC 13-18-3-2.5 requires each CSO community that has an approved UAA to "review information generated after the use attainability analysis was approved by the department to determine whether the conclusion of the use attainability analysis is still valid. The NPDES permit holder shall provide the results of the review to the department."

The five-year review by the CSO Community and IDEM is one reason why CSO communities are never really "done" despite being in full compliance with LTCPs and the CSO Policy.

Environmental Rules Board – Questions pulled from the transcript of the original ERB Hearing – responses provided for the board's information.

23. Does the agency believe that communities currently under state or federal CSO orders would be able to meet Indiana's current Water Quality Standards under the 2012 Criteria?

How the criteria is implemented is determinative. If Indiana's RWQS is implemented as proposed in the *RWQS Implementation Proposal*, the criteria would be achievable for CSO communities that have completed their LTCP and post-construction monitoring. The UAA would remain a viable route for communities that cannot satisfy the WQS implemented as proposed by the Petitioners.

24. Doesn't EPA have to approve any changes to Indiana's water quality standards?

Please see attached *RWQS Implementation Proposal* discussion regarding why EPA should not have the authority to approve or disapprove of the way in which Indiana implements its RWQS for CSO discharges.

25. Do we know what EPA's position is on implementation of the criteria and how they are assuring that other states that have adopted the criteria are able to prove that they are meeting water quality standards?

The *RWQS Implementation Proposal* is a new approach. As set forth in the Proposal, EPA should not have the authority to approve or disapprove of the implementation changes.

26. I have heard the agency talk about implementation being difficult. What are the difficulties the agency sees with implementing the 2012 Criteria?

Similar to the 10% exceedance for E.coli that affected only NPDES discharges, The Petitioners' Proposal is tailored to CSO communities and is not intended to impact TMDL calculations or other water programs.

Criteria would only be applicable after communities have completed state or federally approved LTCPs with pre-negotiated LOC. [Refer to question 1 response to match the language and position of our response] The implementation changes of the Proposal and the performance standard approach are not intended to reduce any LTCP requirements.

27. Can you explain the difference between a "design storm" and "events per year" community?

Typical year communities, such as Mishawaka, are those that have negotiated a level of CSO control based on affordability. This is done by the development/calibration/validation of a sewer system model and then CSO controls (improvements) are incorporated and a "typical year" or 5 year span is utilized to determine how many overflows will occur after full LTCP implementation. The length of LTCP schedule and dollars spent for each alternative is then run through a Financial Capability Analysis (i.e. 2.0% Wastewater Cost per Median Household Indicator) to determine how much residents can afford.

Design Storm Communities are those that have committed to comply with IDEM's NPD Water-016: CSO Treatment Facilities. Basically, CSO communities must provide full treatment to Combined Sewer System (CSS) flows generated by the 1 year, 1 hour design storm and provide primary treatment and disinfection to the 10 year, 1 hour design storm. This approach was borne from MI CSO design approaches and Indiana was urged to evaluate by EPA R5.

The NPD states that IDEM will apply Enforcement Discretion for residual CSOs so long as controls are designed for this level of control, Operational Plan requirements are met, etc. The NPD also states that:

"A CSO Treatment Facility designed and operated as discussed in this document provides a prescribed high level of CSO treatment that precludes the need for a use attainability analysis."

From the Petitioner's perspective, many permittees (approx. 65) opted for this approach with the understanding that regulatory certainty would be granted by IDEM through Enforcement Discretion (previously residual CSOs were force majeure, but IDEM changed due to EPA). Enforcement Discretion language was then removed from NPDES permits in approx. 2012 and CSOs were then considered to be prohibited per revised permit language.

28. What effect would the criteria change have on existing Agreed Orders, State Agreed Judgments and Consent Decrees that CSO communities have negotiated with Indiana and EPA?

The *RWQS Implementation Proposal* would not have any impact until after full and successful completion of a LTCP and post-construction monitoring. The proposed implementation changes to the RWQS should not affect Agreed Orders, State Agreed Judgments, or Consent Decrees. Rather, the Proposal would allow CSO Communities to achieve compliance with WQS after full compliance with LTCPs and any state or federal agreements.